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May 9, 2014

Kristofor R. Swanson
U.S. Department of Justice
Environmental & Natural Resources Division
Natural Resources Section
P.O. Box 663
Washington, DC 20044-0663

**Re: Written Notice of Commencement of 30-Day Informal Dispute Resolution Period;
Northwest Environmental Advocates v. Locke, et al., U.S. District Court for the District of
Oregon, Case No. CV09-0017-PK.**

Dear Mr. Swanson:

As required by the settlement agreement in the above-referenced matter, this letter advises you that Northwest Environmental Advocates believes there is a dispute or controversy between Northwest Environmental Advocates, the U.S. Environmental Protection Agency, and the National Oceanic and Atmospheric Administration regarding the court order and settlement agreement that resolved the above-referenced case.

Specifically, during a May 7 meeting between the settling parties, EPA and NOAA stated to Northwest Environmental Advocates that the agencies are unable to make a final decision approving or disapproving Oregon's coastal nonpoint pollution control program by May 15, 2014, as required by paragraph 2 of the September 28, 2010 *Agreed Order Dismissing APA Claims Without Prejudice*. That paragraph states:

On or before May 15, 2014, EPA and NOAA shall either: (a) issue a Full Approval Decision Memorandum approving, without conditions, Oregon's Coastal Nonpoint Pollution Control Program, pursuant to 16 U.S.C. § 1455b(c)(1); or (b) make a finding that the State of Oregon has failed to submit an approvable program, pursuant to 16 U.S.C. § 1455b(c)(3) and (4). If EPA and NOAA make a finding that the State of Oregon has failed to submit an approvable program, the agencies shall, pursuant to 16 U.S.C. § 1455b(c)(3) and (4), withhold Clean Water Act Section 319 and Coastal Zone Management Act Section 306 grant funds from Oregon beginning in the funding cycles that immediately follow the agencies' finding and in all future years unless and until EPA and NOAA issue a Full Approval Decision Memorandum approving the State's Coastal Nonpoint Pollution Control Program without conditions.

Paragraph 2 of the final settlement agreement imposes the same obligation.

Given the agencies' stated position that they cannot meet the May 15 decision deadline, this letter commences a 30-day informal dispute resolution period that ends on Monday June 9, 2014. There is now a dispute or controversy about the federal defendants' performance of the settlement agreement that you are required to use your best efforts to settle and resolve. Accordingly, and as soon as possible, please provide us with a proposed date by which the federal defendants will make a final decision approving or disapproving Oregon's coastal nonpoint source pollution control program.

Please also provide us with assurances that EPA and NOAA will comply with their commitment not to award full CWA Section 319 or CZMA Section 306 grant funds to Oregon after May 15, 2014 based on any conditional approval of Oregon's CNPCP. In addition to the requirement imposed by the *Agreed Order*, as quoted above, Paragraph 2 of the final settlement agreement states:

After May 15, 2014, EPA and NOAA shall not award full CWA Section 319 or CZMA Section 306 grant funds to Oregon based on any conditional approval of Oregon's CNPCP.

During the May 7 meeting, the agencies expressed a reluctance to withhold the funds as required by both the *Agreed Order* and the settlement agreement. Northwest Environmental Advocates is open to continuing to discuss the matter with the agencies, but at this point, there appears to be a dispute between the parties regarding the agencies' requirement to withhold the State of Oregon's funding.

Northwest Environmental Advocates stands ready to work with you to resolve this dispute quickly and amicably. We look forward to your response and we thank you in advance for working in good faith to ensure completion of the settlement obligations.

Sincerely,



Paul Kampmeier
Washington Forest Law Center

Allison LaPlante
Earthrise Law Center

cc: Nina Bell
Ms. Stephanie Campbell, NOAA OGC
Mr. John King, NOAA
Ms. Kelly Gable, EPA ORC
Mr. Ankur Tohan, EPA ORC
Mr. David Powers, EPA Region 10
Ms. Jennifer Byrne, EPA ORC